

REMARKS

Claims 1-29 and 31 were originally filed in this application. Claims 3, 5 and 26-29 have been withdrawn and claim 4 has been cancelled. Claims 1, 2, 6-25, and 30 have been rejected.

After an Examiner Interview on November 2, 2010 between Examiner Shannon Saliard and Attorney Shahpar Shahpar, it was agreed that Applicant would submit this Supplemental Reply with a second Declaration from one or more inventors or others having knowledge of whether the invention of the pending claims was sufficiently tested to demonstrate that it worked for its intended purpose at least as early as June 22, 2001. It was also agreed during this Examiner Interview that Applicant would submit this Supplemental Reply without a Request for Continued Examination or extension fees, because it should generate an allowance of the pending claims in this application.

Reconsideration of this application is respectfully requested.

Drawing Figures Objection(s)

Based on a phone conference between Examiner Shannon Saliard and Attorney Shahpar Shahpar on January 26, 2009, Examiner Saliard has agreed to hold the objection to the drawings in abeyance (and allow any required changes to be made upon payment of the issue fee). This understanding was confirmed via voicemail with Examiner Saliard on September 28, 2009.

Rejection(s) under 35 U.S.C. § 103

Claims 1, 6-8, 21, 22, and 24

Claims 1, 6-8, 21, 22, and 24 are rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Hafen (U.S. Publication No. 2003/0023453).

1. Inventor of Claimed Invention Swears Behind Hafen Reference Under 37 C.F.R. 1.131

Applicant had previously submitted a Declaration of inventor Chris Bierman dated March 25, 2010 along with Evidence illustrating a completion of invention date of the pending claims at least as early as June 22, 2001, where the Declaration dated March 25, 2010 is incorporated by reference herein.

After an Examiner Interview on November 2, 2010 between Examiner Shannon Saliard and Attorney Shahpar Shahpar, it was agreed that a second Declaration of one or more inventors or others having knowledge to show that the invention of the pending claims was sufficiently tested to demonstrate that it worked for its intended purpose at least as early as June 22, 2001 would also be submitted in this Supplemental Reply.

Applicant submits the attached Declaration of inventor Bruce Royer and attached Declaration of Rodney W. McDowell along with Evidence illustrating a completion of invention date of the pending claims at least as early as June 22, 2001.

The previously filed Declaration of Chris Bierman (dated March 25, 2010), the attached Declaration of inventor Chris Bierman, Declaration of inventor Bruce Royer, and Declaration of Rodney W. McDowell establish the following:

- 1) completion of invention of the subject matter of the above-referenced application in the United States is at least as early as June 22, 2001; and
- 2) the invention of the subject matter of the above-referenced application was sufficiently tested to demonstrate that it worked for its intended purpose at least as early as June 22, 2001.

See attached Declarations of inventors Chris Bierman and Bruce Royer and Declaration of Rodney W. McDowell, paragraphs 2 and 3. Thus, Applicant has shown both a completion of invention of the pending claims at least as early as June 22, 2001, and that the invention of the pending claims was sufficiently tested to demonstrate that it worked for its intended purpose at least as early as June 22, 2001. See attached Declarations of inventors Chris Bierman and Bruce Royer and Declaration of Rodney W. McDowell, paragraphs 4-8. Therefore, invention of the subject matter of claims 1, 2, and 30 was reduced to practice prior to the effective date of the Hafen reference. See 37 C.F.R. 1.131.

The Hafen reference is effective as a reference under 35 U.S.C. 102(e) on July 30, 2001 (the date of the provisional patent application from which the Hafen reference/application claims priority). Declarations of inventors Chris Bierman and Bruce Royer, Declaration of Rodney W. McDowell, and the previously filed Declaration of Chris Bierman dated March 25, 2010, evidence that the subject matter of the pending claims was reduced to practice at least as early as June 22, 2001 by having a completion of invention date at least as early as June 22, 2001 and by

being sufficiently tested to demonstrate that it worked for its intended purpose at least as early as June 22, 2001 (which is prior to the July 30, 2001 effective date of the Hafen reference).

Thus, Applicant swears behind the Hafen reference, so that Hafen is overcome as a viable reference.

2. Regardless, Claimed Invention Independently Patentable Over Hafen Reference

Applicant incorporates by reference herein the previous arguments made in the prior responses to distinguish the Hafen reference and any other cited art of record.

Thus, Hafen fails to teach, advise, or suggest one or more missing claimed elements, so that claims 1 and claims 6-8, 21, 22, and 24 (which variously depend from claim 2) are patentable over Hafen.

Claims 2, 9, 10, 16, 17, 20, and 30

Claims 2, 9, 10, 16, 17, 20, and 30 are rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Hafen (U.S. Publication No. 2003/0023453) in view of McCarty et al. (U.S. Patent No. 5,946,660).

Since the Hafen reference is not a viable reference based on the Evidence submitted in the attached Applicant's Declaration of inventor Chris Bierman under 37 C.F.R. 1.131, claims 2, 9, 10, 16, 17, 20, and 30 are patentable over Hafen in view of McCarty.

Regardless, Applicant incorporates by reference herein the previous arguments made in the prior responses to distinguish the McCarty reference and any other cited art of record.

Thus, Hafen in view of McCarty fails to teach, advise, or suggest one or more missing claimed elements, so that claims claim 2 (and claims 9, 10, 16, and 20, which variously depend from claim 2) and 30 are patentable over Hafen in view of McCarty.

Claim 11

Claim 11 is rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Hafen in view of McCarty as applied to claim 2 and further in view of Vasquez (Article entitled "Housing Crunch...Leave Area").

For the same reasons as discussed above in connection with claim 2 (from which claim 11 depends), claim 11 is patentable over McCarty in view of Vasquez.

Claim 12

Claim 12 is rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Hafen in view of McCarty and Vasquez as applied to claim 11 and further in view of Official Notice of Inomata (U.S. Patent No. 6,999,825).

For the same reasons as discussed above in connection with claim 2 (from which claim 12 depends), claim 12 is patentable over McCarty and Vasquez in view of Official Notice of Inomata.

Claim 13

Claim 13 is rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Hafen in view of Taylor (U.S. Pub. No. 2002/0010601).

For the same reasons as discussed above in connection with claim 1 (from which claim 13 depends), claim 13 is patentable over Hafen in view of Taylor.

Claims 14 and 18

Claims 14 and 18 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hafen in view of Gale (U.S. Pub. No. 2001/0025250).

For the same reasons as discussed above in connection with claim 1 (from which claims 14 and 18 depend), claims 14 and 18 are patentable over Hafen in view of Gale.

Claim 15

Claim 15 is rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Hafen in view of Gross (U.S. Patent No. 6,721,716).

For the same reasons as discussed above in connection with claim 1 (from which claim 15 depends), claim 15 is patentable over Hafen in view of Gross.

Claim 19

Claim 19 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hafen in view of Brady (U.S. Pub. No. 2004/0088318).

For the same reasons as discussed above in connection with claim 1 (from which claim 19 depends), claim 19 is patentable over Hafen in view of Brady.

Claim 23

Claim 23 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hafen as applied to claim 22 and further in view of Official Notice.

For the same reasons as discussed above in connection with claim 2 (from which claim 23 depends), claim 23 is patentable over Hafen in view of Official Notice.

Claim 25

Claim 25 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hafen as applied to claim 22 and further in view of Petkovsek (U.S. Pub. No. 2002/0111923).

For the same reasons as discussed above in connection with claim 2 (from which claim 25 depends), claim 25 is patentable over Hafen in view of Petkovsek.

Conclusion

Thus, the Applicant respectfully submits that the subject application is in condition for allowance. Reconsideration of the application is thus requested. Applicant invites the Office to telephone the undersigned attorney if he or she has any questions whatsoever regarding this Response or the subject application in general. The Commissioner is authorized to charge any additional fees to maintain this application or to deposit any overpayment to Deposit Account No. 503289.

Respectfully submitted,



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